

Docket No.: C37780/123357

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Examiner: Florian M. Zeender
Philip M. GREEN)
Serial No.: 10/077,429) Group Art Unit: 3627
Filed: February 15, 2002)

AFFIDAVIT IN SUPPORT OF EXPERIMENTAL USE

I, Philip M. Green, am the sole inventor of the invention claimed in the patent application identified above and titled RULES-BASED ACCOUNTING SYSTEM FOR SECURITIES TRANSACTIONS. I have been employed by the Bank of New York since 1989 and currently hold the position of Vice President. I previously assigned the above invention to the Bank of New York, but I have been involved in the implementation of the invention since its conception.

I hereby affirm that certain activities took place more than one year before the patent application was filed on February 15, 2002, and that some of these activities involved the invention originally claimed in the above patent application. Specifically, the invention was used by the Bank of New York (BNY) to perform accounting services for JP Morgan prior to February 15, 2001 (the critical date), and compensation was received by BNY from JP Morgan for these services. However, this use was primarily experimental, and the compensation received was incidental to the experimental purpose of perfecting the invention.

After I conceived of the invention, I disclosed it to others within BNY, and software was written to implement the invention. We determined that it would be necessary to test the invention using actual client data in order to determine whether the invention worked properly and to identify and eliminate bugs in the software before commercially exploiting the invention. In order to perform the testing, an agreement was reached with JP Morgan whereby they would provide data for a number of

accounts and BNY would perform accounting services on the data using the invention. BNY maintained complete control over the invention during the testing. BNY maintained ownership and custody of the software, and no software embodying the invention was provided or licensed to JP Morgan or to anyone else outside of BNY prior to the critical date. In addition, a confidentiality agreement was in place at that time between BNY and JP Morgan, and JP Morgan was not permitted to disclose the invention to others. The invention was not disclosed to or used for anyone else outside of BNY prior to the critical date. Furthermore, during all use prior to the critical date, BNY monitored the performance of the invention, and corrected problems that were identified. A number of changes to the software were made as a result of the experimental use. Records were kept at that time to the extent necessary to evaluate performance of the invention and to correct problems that were identified.

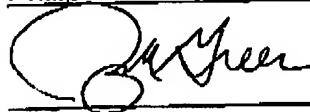
Further, the compensation was small that was received by BNY from JP Morgan for accounting services performed using the invention prior to the critical date. Specifically, this compensation was less than the cost of performing the services and correcting the problems that were encountered with the software. Thus, the compensation received was incidental to the primary purpose of experimentation at that time. The experimental use was performed systematically and continually by BNY personnel who were the same personnel who were responsible for reducing the invention to practice. Furthermore, since only JP Morgan was involved, and the invention was not disclosed to others, contact with potential clients was minimal. Moreover, use prior to the critical date was performed for no longer than was necessary before the determination was made that the invention would work satisfactorily.

In addition, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signature:

Name:

Philip M. Green



Inventor's signature:

Date:

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